



**Churchill Ochieng v Republic (Criminal Appeal E104 of 2024)
[2025] KEHC 6983 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6983 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E104 OF 2024**

DR KAVEDZA, J

MAY 27, 2025

BETWEEN

CHURCHILL OCHIENG APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 19th September 2024 by Hon. C.M Njagi (PM) at Kibera Chief Magistrate's Court Sexual Offences Case No. E093 of 2023 Republic vs Churchill Ochieng)

JUDGMENT

1. The appellant was charged and after full trial convicted by the Subordinate Court of the offence of defilement contrary to section 8(1) as read with 8(3) of the *Sexual Offences Act* No 3 of 2006. The particulars were that on 14th August 2023 at [Particulars Withheld] Area in Kibra Sub-County within Nairobi County, the appellant intentionally and unlawfully caused his genital organ (penis) to penetrate the genital organ (vagina) of CAO a child aged 17 years. He was sentenced to serve fifteen (15) years imprisonment to run from 18th August 2023.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted.
3. This is the first appellate court and in *Okeno v R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.
4. PW1, CAO, a minor born on 28/5/2006, testified she knew the appellant, Churchill Ochieng, who had pursued her romantically. In August 2023, after a dispute with her father, she ran away to her



- aunt's. En route, she met the appellant and borrowed his phone to call a friend. Unable to reach her friend, she accompanied the appellant to his residence around 8 pm.
5. At midnight, the appellant demanded sex, which PW1 refused. He proceeded to engage in sexual intercourse with her. PW1 returned to the appellant's residence the following day and again on 14/8/2023. She learnt of the appellant's arrest thereafter.
 6. PW2, KO, PW1's father, confirmed her birth date as 28/5/2006, making her 17 years old. He discovered an unknown call on PW1's phone, questioned her, and she fled. He obtained the appellant's contact and reported the matter to the chief, leading to the appellant's arrest for being with his daughter.
 7. PW3, Jacob Karonje, a clinician at Coptic Hospital, examined PW1 on 16/8/2023. No physical injuries were noted, and genital examination revealed no bruises on the labia. Hymen remnants indicated prior penetration, with a broken hymen suggesting lost virginity. He produced the P3 and PRC forms as evidence.
 8. PW4, PW1's friend and classmate, confirmed she called him, fearing her father's punishment, which prompted her to run away. Unable to stay with him, she later used the appellant's phone to request Kshs 100 for breakfast.
 9. PW5, PC Esther Kagera, the Investigating Officer, interviewed PW1's parent on 16/8/2023 regarding the runaway minor. She produced PW1's birth certificate, confirming her date of birth as 28/5/2006.
 10. In his defence, the appellant claimed that on 12/8/2023, a lady borrowed his phone and they parted ways. On 15/8/2023, he was questioned about a child, summoned to the chief's office, and arrested after PW1 identified him. He denied PW1 was ever at his residence.
 11. To succeed in a prosecution for defilement, it must be proven that the accused committed an act that caused penetration with a child. "Penetration" under Section 2 of the Act means, "the partial or complete insertion of the genital organs of a person into the genital organs of another person."
 12. Further, section 8(1) and (4) of the [Sexual Offences Act](#), No 3 of 2006 provides thus: -
 8. Defilement
 - (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
 - (4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
 13. The complainant's age was conclusively established. PW1 testified she was born on 28/5/2006, making her 17 in August 2023. This was corroborated by her father (PW2) and substantiated by her birth certificate, produced by PW5, the Investigating Officer. Under Kenyan law, a person under 18 is a child, incapable of consenting to sexual activity. Thus, the element of age was proved.
 14. On the ingredient of penetration, PW1 testified that on 12/8/2023, despite refusing the appellant's advances, he engaged in non-consensual intercourse with her. She returned to his residence on 14/8/2023. PW3, a clinician at Coptic Hospital, found hymen remnants, indicating prior penetration. Although no injuries or bruises were observed, the broken hymen satisfied the statutory requirement for penetration.



15. The appellant's identity as the perpetrator was undisputed. PW1, familiar with the appellant due to his prior romantic interest, clearly recounted the events and identified him as Churchill Ochieng, who took her in and committed the act.
16. PW4, PW1's classmate, corroborated her presence with the appellant, noting she used his phone to request Kshs 100 for breakfast. PW2 confirmed obtaining the appellant's contact and confronting him via the chief's office, where PW1 identified him.
17. The prosecution's evidence credibly established the elements of defilement: the complainant's minor status, penetration, and the appellant's identity as the perpetrator. The trial court's findings were sound, supported by consistent testimony and documentary evidence. Accordingly, the appeal against conviction is dismissed.
18. On sentence, the appellant was sentenced to serve fifteen years imprisonment. During sentencing, the court considered the appellant's mitigation, and the pre-sentence report and exercised discretion. In the premises, I see no reason to interfere with the sentence.
19. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 27TH DAY OF MAY 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant.

